

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HAMANI ISHMAEL HANIBLE,

Defendant-Appellant.

UNPUBLISHED

February 1, 2011

No. 295045

Wayne Circuit Court

LC No. 09-013335-01

Before: SAWYER, P.J., and WHITBECK and WILDER, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of first-degree home invasion, MCL 750.110a(2). Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 4 ½ to 20 years' imprisonment for the first-degree home invasion conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is whether there was sufficient evidence to convict him of first-degree home invasion. Specifically, defendant contends there was insufficient evidence to convict him of first-degree home invasion because he never entered the dwelling and he did not have the specific intent to commit an assault and battery. We disagree. When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court reviews the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

The elements of first-degree home invasion are: (1) the defendant broke and entered a dwelling or entered the dwelling without permission; (2) when the defendant did so, he intended to commit a felony, larceny, or assault, or he actually committed a felony, larceny, or assault while entering, being present in, or exiting the dwelling; and (3) another person was lawfully present in the dwelling or the defendant was armed with a dangerous weapon. *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004); MCL 750.110a(2). Defendant was tried under the theory that he entered without permission and committed an assault inside the home. Defendant challenges whether there was sufficient evidence to establish that he entered Maia Dozier's apartment and whether he had the intent to commit an assault.

The evidence, when viewed in the light most favorable to the prosecution, was sufficient to convict defendant of first-degree home invasion. The evidence presented at trial showed that, on the evening of April 7, 2009, defendant and Carlita Walker traveled in Walker's car to Dozier's apartment. The front door to the residential two family flat was open, and defendant entered the building. Defendant walked up the stairs leading to a landing in front of Dozier's flat. Defendant knocked on Dozier's door and she opened the front door. According to Dozier, defendant began arguing with her and pushed his way into the house about three or four feet. She also stated that defendant grabbed her neck and choked her. Markeisha Lauchie, Dozier's fiancée, also asserted that she saw defendant inside the apartment. Specifically, she saw defendant in the kitchen next to the refrigerator. The women also asserted that they never gave defendant permission to enter their apartment. Viewing this evidence in the light most favorable to the prosecution, it is sufficient for a reasonable jury to find that defendant entered the apartment without permission.

There is also sufficient evidence that defendant had the intent to commit an assault and, in fact, committed an assault and battery. An assault is either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery. *People v Nickens*, 470 Mich 622, 628; 685 NW2d 657 (2004). Moreover, a battery is an intentional, unconsented and harmful or offensive touching of the person. *Id.* In the present case, Dozier and Lauchie testified that defendant pushed and choked Dozier. This evidence is sufficient for a reasonable jury to find that defendant's conduct was intentional, unconsented to and harmful or offensive. Accordingly, a reasonable jury could find that defendant committed an assault and battery.

While defendant contends that his testimony conflicts with Dozier's and Lauchie's testimony, and he indicated that he did not enter the home and he pushed Dozier only in self-defense, questions of witness credibility ordinarily should be left for the trier of fact. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998). In the present case, the jury found Dozier's and Lauchie's testimony more credible than defendant's because it found him guilty of first-degree home invasion. We will not interfere with the trier of fact's role in determining the credibility of the witnesses or the weight of the evidence. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). Accordingly, we find defendant's conviction of first-degree home invasion is supported by sufficient evidence.

Affirmed.

/s/ David H. Sawyer
/s/ William C. Whitbeck
/s/ Kurtis T. Wilder